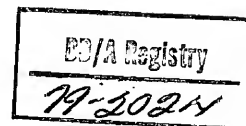


OGC 79-05422

13 June 1979



DD/A Registry  
File *Legal-1*

MEMORANDUM FOR: Director of Central Intelligence  
Deputy Director of Central Intelligence  
Morning Meeting Participants

FROM: Daniel B. Silver  
General Counsel

SUBJECT: Charter Legislation -- Comparative Analysis  
of Administrative Positions and S. 2525  
Restrictive Provisions

You will recall that at the 4 June morning meeting I presented a short briefing concerning the current status of the intelligence charter legislation. I also promised at that time to furnish you with a comparison between the Administration's positions and the corresponding provisions of Title II of S. 2525 that would impose statutory restrictions on intelligence activities. Attached, for your information, is a copy of such a comparative analysis that we have prepared and that has been circulated to SCC members for comment by the NSC. I would be happy to discuss this summary and any further questions you may have regarding charter legislation.

A rectangular box used to redact the signature of Daniel B. Silver.

Daniel B. Silver

STAT

DD/A Registry  
79-2024

Attachment

Cys sent to 8 DDA Office Directors

Approved For Release 2003/09/04 : CIA-RDP83-00456R000300030001-1  
 RCUT AND TRANSMITTAL SLIP

TO: (Name, office symbol, room number, building, Agency/Post) Initials Date

1. EO/DDA

2. ADDA

3. DDA

4. *KAREN-*

5. *① Distribute to Office Directors*

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

*DDA of not done already.  
 If this is a sample of  
 Don Silver's work - he's all  
 right!*

*② Need back binder clips.*

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

COMPARATIVE ANALYSIS OF ADMINISTRATION POSITIONS AND S. 2525 8 June 1979

I. COLLECTION OF FOREIGN INTELLIGENCE CONCERNING U.S. PERSONS

ADMINISTRATION

S. 2525

DIFFERENCES

Electronic Surveillance and Physical Search in U.S.

FISA - Court order - U.S. person engaged in clandestine intelligence activities that involve violation of U.S. criminal law, or international terrorism, sabotage, (Sec. 225)

FISA - Court order, criminal standard - U.S. person engaged in clandestine intelligence activities that involve violation of U.S. criminal law, or international terrorism, sabotage, (Secs. 311, 341)

None, both use "criminal standard."

Electronic Surveillance and Physical Search Abroad

Court order - U.S. person in possession of information determined by SCC to be "essential" to U.S. national security or foreign relations. (Sec. 214)

Court order - U.S. person engaged in clandestine intelligence activities that would violate U.S. criminal law if in U.S., or in international terrorism, sabotage, acting as official for foreign power, or is fugitive from U.S. justice. (Secs. 321, 341)

Administration authority based on nature of information sought. S. 2525 relies on "criminal standard" and other specified circumstances.

Placing Employees in U.S. Organizations or Organizations Substantially Composed of U.S. Persons

Attorney General approval - to collect information determined by SCC to be "essential" to U.S. national security or foreign relations. In U.S. limited to FBI and military. (Sec. 215)

Entity head approval - U.S. person or group engaged in clandestine intelligence activities, and, in addition in U.S., that involve violation of U.S. criminal laws. Also may be approved if subject involved in international terrorism, sabotage, assassination, acting as official for foreign power, or is fugitive from U.S. justice. In U.S. only on behalf of FBI. (Secs. 214, 244)

Administration authority based on nature of information sought: S. 2525 relies on "criminal standard" in U.S. and other specified circumstances and allows activity by entities other than FBI in U.S. only if on FBI behalf. (Under Title IV CIA only authorized to collect foreign intelligence from foreign persons in U.S.)

Mail Covers, Physical Surveillance, Directing Human Sources

Entity head approval - to collect information determined by SCC to be "important" to U.S. national security or foreign relations. In U.S. limited to FBI and military. (Sec. 216)

Attorney General written finding - use of technique is necessary and reasonable in collection based on determination U.S. person engaged in clandestine intelligence activities, and, in addition in U.S., that involve or may involve violation of U.S. criminal laws. Also may be approved if subject involved in international terrorism, sabotage, assassination, acting as official for foreign power, or is fugitive from U.S. justice. (Secs. 214, 215)

Administration authority based on nature of information sought, approval by entity head and limited to FBI in U.S.; S. 2525 relies on "criminal standard" in U.S. and other specified circumstances, requires AG approval, and not limited to FBI. (Under Title IV CIA only authorized to collect foreign intelligence from foreign persons in U.S.)

Collection by Other Means  
(Third Party and Pretext  
Interviews, Incidental  
Collection, etc.

Allowed under General authority (without mention of specific techniques) to fulfill a lawful entity function and governed by procedures approved by the Attorney General. (Sec. 213)

Designated official approval - U.S. person engaged in clandestine intelligence activities, and, in addition in U.S., that involve or may involve a violation of U.S. criminal law. Also may be approved if subject involved in international terrorism, sabotage, assassination, acting as official for foreign power, or is fugitive from U.S. justice. (Sec. 214)

Administration relies on AG procedures; S. 2525 relies on "criminal standard" and other specified circumstances.

## II. COLLECTION OF COUNTER- INTELLIGENCE CONCERNING U.S. PERSONS

Electronic Surveillance and  
Physical Search in U.S.

FISA - Court order - U.S. person engaged in clandestine intelligence activities that involve violation of U.S. criminal law, or international terrorism, sabotage. (Sec. 225)

FISA - Court order - U.S. person engaged in clandestine intelligence activities that involve violation of U.S. criminal law, or international terrorism, sabotage. (Secs. 311, 341)

None, both use "criminal standard."

Electronic Surveillance and  
Physical Search Abroad

Court order - U.S. person is or may be engaged in clandestine intelligence activities on behalf of a foreign power. (Sec. 219)

Court order - U.S. person engaged in clandestine intelligence activities that would violate U.S. criminal law if in U.S. or in international terrorism, sabotage, acting as official for foreign power, or is fugitive from U.S. justice. (Secs 321, 341)

Administration authority based on clandestine intelligence activities; S. 2525 relies on "criminal standard" and other specified circumstances.

Placing Employees in  
U.S. Organizations

Senior official approval - facts and circumstances indicate U.S. person or group is or may be engaged in clandestine intelligence activities on behalf of a foreign power, and governed by procedures approved by the Attorney General limiting activity to that necessary to achieve significant and lawful objectives. (Sec. 220)

Entity head approval - U.S. person or group reasonably believed to be engaged in clandestine activities, and, in addition in U.S., that involve or may involve violation of U.S. criminal law. In U.S. only on behalf of FBI. Also may be approved if subject involved in international terrorism, sabotage, assassination, acting as official for foreign power. (Secs 213, 244)

Administration requires senior official approval and necessity for lawful objectives; S. 2525 relies on entity head approval and "criminal standard" in U.S. and other specified circumstances and allows activity by entities other than FBI in U.S. only if on FBI behalf.

Mail Covers,  
Physical Surveillance,  
Directing Human Sources

Governed by procedures approved by the Attorney General - senior official review required at least once a year to determine facts and circumstances indicate U.S. person is or may be engaged in clandestine intelligence activities on behalf of a foreign power. (Sec. 221)

Attorney General (or Service Secretary if military subject) written finding - use of technique is necessary and reasonable belief U.S. person engaged in clandestine intelligence activities or, in addition in U.S., that involve or may involve violation of U.S. criminal law. Also may be approved if subject involved in international terrorism, sabotage, assassination, acting as official for foreign power. (Secs. 213, 215)

Administration relies on AG procedures and senior official review; S. 2525 requires AG approval and "criminal standard" in U.S. and other specified circumstances.

Collection by Other Means  
(Third Party and Pretext  
Interviews, Incidental  
Collection, etc.)

Allowed under General Authority (without mention of specific techniques) if facts and circumstances indicate U.S. person is or may be engaged in clandestine intelligence activities on behalf of a foreign power. (Sec. 218)

Designated official approval - U.S. person reasonably believed to be engaged in clandestine intelligence activities, and, in addition in U.S., that involve a violation of U.S. criminal law. Also may be approved if subject involved in international terrorism, sabotage, assassination, acting as official for foreign power. (Sec. 213)

Administration allows collection if subject engaged in clandestine activity; S. 2525 requires official approval and "criminal standard" in U.S. and other specified circumstances.

III. COLLECTION OF INFORMATION  
CONCERNING U.S. PERSONS  
WHO ARE TARGETS OF  
INTELLIGENCE OR TERRORIST  
ACTIVITIES

No specific provision. Authority included in counterintelligence and potential source provisions and to be governed by procedures approved by Attorney General. (Secs. 218-21, 223)

Authorized up to 180 days if subject:  
- reasonably believed to be recruitment target of intelligence or international terrorist organization  
- engaged in activity or possesses information reasonably believed to be target of intelligence or terrorist activity, but only to extent necessary to protect against the activity.

Administration relies on  
procedures; S. 2525 explicitly  
limits duration and  
circumstances.

IV. COLLECTION OF INFORMATION  
CONCERNING U.S. PERSONS  
WHO ARE POTENTIAL SOURCES  
OF INFORMATION OR  
ASSISTANCE

Governed by procedures approved by Attorney General and limiting scope, intensity, duration, as required to determine suitability or credibility. No extraordinary techniques may be used. (Sec. 223)

Authorized if reasonable belief of use as potential source - limited to determining suitability or credibility, and up to 90 days. Consent required unless designated official finds serious intent to use and request for consent would jeopardize activity. Without consent limited to public information, record checks, pretext interviews. (Sec. 221)

Administration relies on  
procedures; S. 2525 more  
explicitly limits duration  
and techniques.

COLLECTION OF INFORMATION  
CONCERNING U.S. PERSONS  
FOR SECURITY PURPOSES

Governed by procedures approved by Attorney General and limiting collection by particular agencies as well as scope, intensity, duration, as required to determine suitability and trustworthiness of applicants for employment or access to protect against security breaches by present or former employees, to protect against direct or imminent threats to personnel, activities, information, property. No extraordinary techniques may be used. (Sec. 224)

Authorizes

- physical surveillance and record checks to limit access to facilities
- local physical surveillance, record checks and pretext interviews as necessary to determine whether physical threat to property or persons should be referred to law enforcement officials
- physical surveillance, record checks, mail covers and human sources for up to 180 days, with entity head approval and with extensions, to determine whether employee, contractor of contractor employee has violated security regulation. (Sec. 222)

Administration relies on procedures; S. 2525 more explicitly limits duration and techniques.

VI. COLLECTION OF INFORMATION  
CONCERNING FOREIGN  
PERSONS IN THE U.S.

No provisions except use of electronic surveillance and physical search limited by FISA to official of foreign power, or member of international terrorist group, or if involved in clandestine intelligence activity.

Same limitations as Administration under FISA on use of extraordinary techniques. Also authorized if

- officer or employee of foreign power
- circumstances indicate reasonably likely to engage in espionage, clandestine intelligence activity
- entity head determines "significant" foreign intelligence sought
- collection would be authorized if subject were U.S. person but without limitations on duration and techniques available.

Administration does not regulate non-intrusive collection; S. 2525 contains broad categories of authorized collection.

## 2. SPECIAL ACTIVITIES

### Review and Approval

Approved by President, after NSC review, if substantial resources or risks involved and "important" to national security. If no substantial resources or risks, may be approved by NSC committee if "will further" national security, but may require President's approval if committee member withholds approval (Secs. 231, 232)

All approved by President, after NSC review, based on specified factors and finding activity is "essential" to national defense or foreign policy, benefits outweigh risks, other means inadequate. Detailed annual review required. (Sec. 131)

Administration allows approval below Presidential level of routine activities and uses "important" and "will further" standards; S. 2523 requires all be approved by President as "essential," specific factors, annual NSC review.

### Congressional Notification

Notify only two intelligence committees on a timely basis. (Sec. 233)

Notify two intelligence committees prior to activity (Hughes-Ryan would continue to require timely notice to other "appropriate" committees). (Sec. 131)

Administration notice timely and only to two committees; S. 2523 notice prior to two committees and timely to others.

### Prohibited Types

Assassination. (Sec. 234)

Assassination, support of international terrorism, mass property destruction, food or water shortages, epidemics, use of chemical or biologic weapons, violent overthrow of democratic governments, support of human rights violations. Undisclosed support for distribution of books, etc., in U.S., or abroad where "likely result" would be "substantial redistribution" in U.S. Limits use of intelligence employees as combatants abroad. (Secs. 134, 135)

Administration bars only assassination; S. 2523 bars other specific types of special activities.

### Entities Authorized to Conduct Special Activities

CIA, DoD during period of hostilities or when military activities involved, other entities under unusual circumstances if President determines necessary. (Sec. 231)

CIA, and during period of war declared by Congress, U.S. Armed Forces. (Sec. 131(j))

Administration allows greater flexibility; S. 2523 retains current limitations.

### Repeal of Hughes-Ryan Amendment

Repeals Hughes-Ryan (Sec. 2422 of title 22, U.S.C.). (Sec. 235)

Not mentioned.

Administration considers repeal as companion action to Sec. 233, requiring timely notification to SSC1 and HPSC1; S. 2523 adds requirements to Hughes-Ryan.



VIII. REVIEW AND APPROVAL OF SENSITIVE INTELLIGENCE COLLECTION PROJECTS

No provision.

NSC review and approval as specified by President. Presidential review and approval of projects of "exceptional importance or sensitivity" based on specified criteria and finding information sought is "essential" to national defense or foreign policy, benefit justifies risk, other means inadequate. Prior notice to intelligence committees of projects approved by President. Annual NSC review and Presidential reaffirmation required. (Sec. 131).

Administration leaves this area to Executive regulation; S. 2525 specifies standards and procedures.

IX. REVIEW AND APPROVAL OF COUNTERINTELLIGENCE ACTIVITIES

No provision.

NSC review and approval as specified by President. Presidential review and approval of projects of "exceptional importance or sensitivity," based on specified criteria. Prior notice to intelligence committees of activities approved by President. Annual NSC review and Presidential reaffirmation required. (Sec. 141)

Administration leaves this area to Executive regulation; S. 2525 specifies standards and procedures.

X. USE OF PERSONS AND ORGANIZATIONS

U.S. Clergy

No provision.

Bars paid use for operational purposes or collection. (Sec. 132(a)(1)).

Administration leaves to Executive regulation; S. 2525 limits specifically.

U.S. Exchange Program Participants

No provision.

Bars paid use for operational purposes or intelligence collection of participants in U.S. sponsored cultural exchange programs. (Sec. 132(a)(2)).

Administration leaves to Executive regulation; S. 2525 limits specifically.

U.S. Media Organization Employees

No provision.

Bars paid use for operational purposes or intelligence collection of accredited journalists, regular contributors, editors, or policy-level officials. (Sec. 132(a)(3)).

Administration leaves to Executive regulation; S. 2525 limits specifically.

XI. PRESIDENTIAL WAIVER  
OF RESTRICTIONS

President may waive any or all restrictions. Exercisable during any period:  
- of war declared by Congress, or  
- covered by a report to Congress under the War Powers Resolution, as necessary to carry out the activity that is the subject of the report. Such waivers must be reported in timely manner to the intelligence committees along with related facts and circumstances. (Sec. 241)

President may waive only limitations on use of clergy and exchange program participants, use of certain organizations for cover, use of permanent resident aliens and academics abroad, and bars on support of international terrorism, mass property destruction, creation of food and water shortages, violent overthrow of democratic governments.

Administration allows all restrictions to be waived in war or armed conflict with timely notice to intelligence committees; S. 2525 specifies certain limitation waivable in war, armed conflict, or grave threat, with prior notice.

XII. REMEDIES

Criminal Penalties

Criminal penalty for electronic surveillance and physical search (including mail opening) conducted in violation of the charter. (Sec. 261)

Criminal penalty for electronic surveillance, physical search (including mail opening) conducted in violation of the charter and unauthorized human experimentation and assassination. (Secs. 331, 251, 252, 134)

Administration criminal penalties only for intrusive techniques; S. 2525 criminal penalties also for unauthorized human experimentation and assassination.

Civil Remedies

Civil remedy available against individuals for electronic surveillance and physical search (including mail opening) conducted in violation of the charter.

Civil remedy available against the U.S. and officials for electronic surveillance, physical search (including mail opening), and human experimentation conducted in violation of the charter, and for any other intelligence activity engaged in for the purpose of interfering with legal or constitutional rights. Civil remedy available only against the U.S. for violations of the Charter that also violate a constitutional right. (Secs. 331, 253, 254)

Administration civil remedies against individuals only for intrusive techniques or intentional violations of constitutional rights; S. 2525 civil remedies against individuals also for human experimentation and other violations of legal or constitutional rights.

Who May Sue

Any person who is not an agent of a foreign power. (Sec. 261)

Any person. (Secs. 253, 254)

Administration limits class of plaintiffs; S. 2525 allows any person to sue.

Bar on Injunctions and  
on Claims Based on  
Procedures and Regulations

No injunction may be obtained and procedures and regulations to implement Title II cannot create enforceable substantive or procedural rights. (Sec. 264)

No provision.

Administration bars injunctions and suits based on implementing regulations; S. 2525 does not.

Suppression of Evidence

Information obtained in violation of the charter or implementing procedures may not be barred from use at trial. (Sec. 264)

No provision.

Administration provision does not allow suppression of evidence in most circumstances; S. 2525 does not bar suppression.